REMARKS

Claims 1-16 are pending in the present application. Claims 7-16 were previously withdrawn by restriction. Claim 1 has been amended, and new claim 17 has been added. Applicants submit that no new matter has been added in the application.

Claim 1 has been amended to specify that the ground contacting surface is a bottom surface of the housing. Support for this amendment can be found at least on page 5, lines 14-17 of the as-filed specification (citation to PCT publication). Additionally, claim 1 has been amended to specify that the mesh-like member defines openings that are sized to permit termites attracted by the bait material to pass therethrough. Support for this amendment can be found at least on page 8, lines 13-16 of the as filed specification. New claim 17 specifies that the housing is configured as a landscape element selected from the group consisting of a rock, a log, a paving or stepping stone, a brick, a border element, and a decorative figurine. Support for claim 17 can be found at least on page 4, lines 23-25 of the as filed specification. Applicants submit that no new matter has been added to the application.

Reexamination of the application and reconsideration of the rejections and objections are respectfully requested in view of the above amendments and the following remarks, which follow the order set forth in the Office Action.

Rejections under 35 U.S.C. § 102

I. Masterson Rejection

Claims 1-6 were rejected under 35 U.S.C. § 102(e) as being assertedly anticipated by Masterson, U.S. Patent No. 6,370,811 ("Masterson"). Applicants respectfully traverse this rejection.

Amended claim 1 recites a camouflaged termite monitoring device that comprises a housing configured as a landscape element that has a *bottom surface* adapted to engage an upper ground surface. The housing defines a cavity and an opening to the cavity through the *bottom surface* of the housing. A perforated bait cartridge is configured to fit within the cavity. A bait material, which is adapted to be attractive to termites, is disposed within the bait cartridge. A mesh-like member is operably engaged with the housing about the *bottom surface* so as to cover the cavity opening and to retain the bait cartridge in the cavity. The mesh-like member defines openings therein, with the openings being sized to permit termites attracted by the bait material to pass therethrough into the cavity and the bait cartridge and to infiltrate the housing. An inspection hatch is operably engaged with the housing and

configured to allow visual inspection of the bait cartridge within the cavity from outside the housing in order to determine whether termites have infiltrated the housing and consumed the bait material in the bait cartridge without removing the housing from engagement with the upper ground surface. Thus, claim 1 requires that the mesh-like member be engaged about the bottom surface to cover the cavity opening and to allow entry into the cavity through the cavity opening in the bottom surface.

Masterson discloses a termite monitoring apparatus comprising a housing body 12 having a main cavity 14 wherein a bait element 16 may be placed. The bait element has a stop member 22 at the bottom extremity thereof. The body 12 includes side walls 20 having a plurality of entrance passages 18 formed therein for admitting termites. *See* c. 3, ll. 35-36. According to Masterson, "a key feature of the invention" is that the entrance passages 18 are covered by porous barrier members 42 having perforations formed therein 43. *See* c. 4, ll. 15-17 and 35-37. The housing further comprises a drain opening 46 at the bottom of the cavity 14 for draining moisture from the apparatus. *See* c. 4, ll. 43-45. The apparatus is designed to be imbedded in the soil to allow termites to enter the cavity 14 through the side walls 20, more specifically, to enter through the perforations 43 of the barrier members 42 that are placed in the side walls 20. *See* c. 4, ll. 15-20.

Masterson fails to disclose a termite monitoring device having a housing with a bottom surface adapted to engage an upper ground surface, much less a device having a mesh-like member engaged about the bottom surface of the housing. As indicated previously, the Masterson apparatus is designed to be imbedded. In fact, it includes a skirt member 48 for facilitating imbedded placement of the housing at a desired depth in the soil. Further, what is arguably the bottom surface of the Masterson apparatus is imbedded in the soil and contains a drain opening 46 for moisture drainage. Thus, given the design and functionality of the Masterson apparatus, one of ordinary skill in the art would have no reason to place the bottom surface of the apparatus on the upper ground surface, as recited in claim 1. Further, the bottom surface of the Masterson apparatus is not engaged with the barrier members 42 thereof. Rather, the barrier members 42 are placed in the side walls 20 of the Masterson apparatus to cover the side wall entrance passages 18. In fact, if a barrier member 42 were in covering relation to the bottom surface of the Masterson apparatus, it would at least partially occlude the drain opening 46 and hinder the functionality of the drain opening 46. Because Masterson fails to disclose every element of the device of claim 1, Applicants

submit that it fails to anticipate the invention of claim 1. As such, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

II. Nimocks Rejection

Claims 1-6 were rejected under 35 U.S.C. § 102(e) as being assertedly anticipated by Nimocks, U.S. Patent No. 5,950,356 ("Nimocks"). Applicants respectfully traverse this rejection.

As indicated above, amended claim 1 recites a termite monitoring device that comprises a housing having a *bottom surface* adapted to engage an upper ground surface. Additionally, a mesh-like member is operably engaged with the housing about the *bottom surface* to cover the cavity opening and to retain the bait cartridge in the cavity. The mesh-like member defines *openings* therein, *with the openings being sized to permit termites attracted by the bait material to pass therethrough* into the cavity and the bait cartridge and to infiltrate the housing.

Nimocks discloses a device for termite detection and eradication comprising a housing 11 including termite access openings 7 formed in a surface of the housing 11, a baiting and access opening 6, and interceptor sheets 1 disposed parallel to the surface of the housing 11 for attracting termites to the housing. The interceptor is fixedly attached to the housing to insure that it will not be moved or removed from the housing. *See* c. 10, ll. 6-8. The interceptor comprises a cellulose containing material that is palatable to termites to attract the termites and enable the termites to eat therethrough in moving toward the bait. In addition, the interceptor has *no* termite entry holes formed in it thus forming a continuous surface around the entire perimeter of the housing. *See* c. 11, ll. 8 et seq. Nimocks discloses a single opening 5 at the top of each of the side walls of the housing through which a screw-type fastener 3 can be passed that is also passed through a hole 2 drilled at the top of the interceptor 1. *See* c. 9, lines 19-24 and FIGS. 1 and 2.

Nimocks fails to disclose a housing having a bottom surface adapted to engage an upper ground surface. The termite access openings 7 of Nimocks are made through side surfaces of the housing rather than a bottom surface of the housing, as required by claim 1. The bottom of the housing 11 is solid (see c. 8, l. 67- c. 9, l. 1), thus if the bottom of the housing of Nimocks happened to be placed on an upper ground surface, no termites would be able to enter the housing therethrough. Further, the device of Nimocks is intended to be buried for use. Thus, placing the bottom surface of the housing on an upper ground surface

would be counter to the intended use of the device and would render the device essentially non-functioning because the bottom of the device is solid thus prohibiting entry of termites. Further, any argument that the Nimocks housing could be orientated for placement differently than shown in the figures and suggested by the specification is without merit because any other orientation would likely result in the bait material falling out of the housing thus also detrimentally affecting the functionality of the device.

Additionally, Nimocks fails disclose a mesh-like member as recited in claim 1. For example, Nimocks fails to disclose a mesh-like member operatively engaged about the bottom surface of the housing to cover the cavity opening. The interceptors of Nimocks are in the side walls of the housing rather than the bottom surface of the housing. Further, the base of the Nimocks device is solid without any openings therein. Thus, a mesh-like member engaged about the bottom surface of the housing would not be in covering relation to a cavity opening, as required by claim 1, and would also be pointless because termites would not be able to enter the housing through the solid bottom even if they were able to penetrate the mesh-like member. Further, Nimocks fails to disclose a mesh-like member having openings therein. A single opening is not openings, plural, as required by claim 1. Further, the single hole 2 of the interceptor 1 is not sized to permit entry of termites attracted by bait material to pass therethrough, as required by claim 1, but rather is sized to allow a fastener to pass therethrough. Thus, a termite would not be able to pass through the single hole 2 when the device is assembled because a fastener would be disposed therein. Because Nimocks fails to disclose every element of the device of claim 1, Applicants submit that it fails to anticipate the invention of claim 1. As such, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

For the foregoing reasons, claim 1 and claims 2-6 and 17, which depend therefrom, are considered allowable. A Notice to this effect is respectfully requested. If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

Respectfully submitted,

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